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TO: Flathead County Planning Board

FROM: Mark Mussman, CFM, Director 

DATE: February 10, 2021

RE: FLLSTA-20-01: Revisions to the Flathead County Lake and Lakeshore Protection Regulations

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The Flathead County Lake and Lakeshore Protection Regulations were adopted on April 13, 1982 under the authority of Section 75-7-207, M.C.A. Subsection 2 and 3 of that sections states, "Where a planning board has been created under 76-1-104 for an area containing a lake, the governing body shall seek the recommendations of the planning board as to the regulations to be adopted under this part." (3) The local governing body may provide a summary procedure to permit work which it hinds has a minimal or insignificant impact on a lakeshore."

The initial regulations included an opportunity for summary review which allowed the Board of Commissioners to grant a Lakeshore Construction Permit application if was determined that the proposed work would have "a minimal or insignificant impact on the lake, lakebed or its lakeshore." The regulations also required that if the planning staff or the Commissioners did determine the proposal would have a significant impact on the lake, lakebed, or lakeshore, the Planning Board was required to make a recommendation to the Commissioners.

On May 11, 1989, the text of the regulations were amended to include the following: "The Planning Office may issue an administrative permit for docks, decks, walkways, waterlines, rip rap, free-standing pilings adjacent to docks and any other activity for which a permit is required when such activity is found by the Planning Office to have a minimal or insignificant impact on a lakeshore and to comply with the standards found in Section 4.2 and 4.3 of these regulations." The ability for the Planning Office to issue administrative permits has remained in the regulations since that time.

In the course of litigation on a project on Lake Five which also involved two Lakeshore Construction Permits, the attorney for the plaintiffs questioned the ability of the Planning Department to issue administrative permits. The plaintiff's attorney cited Section 75-7-211, M.C.A., which states in part, "Where a planning board has been created under 76-1-104 for the area containing the lake in question, the governing body shall seed the recommendation of the planning board as to the compliance of the proposed work with the criteria for the issuance of a permit." And while Section 75-7-207(3), M.C.A. does provide a summary review procedure to allow the Commissioners to permit work if it finds the work has a minimal or insignificant impact

on a lakeshore, County legal staff concluded that Montana Code does not allow the Planning Department the ability to issue Lakeshore Construction Permits.

With that said, the Commissioners have directed the Planning Department to amend the regulations to eliminate the issuance of Lakeshore Construction Permits by the Planning Department. Also included in the request text amendment is a procedure to appeal interpretations of the Lake and Lakeshore Regulations. All of the other regulations the Planning Department administers outline a process to appeal interpretations and decisions except for these regulations. One other minor request is a name change of one of the lakes referenced in Section 1.4 from Lost Coon Lake to Lost Loon Lake.

Attached to this memorandum as Exhibit A is the requested amendments to the text of the Lake and Lakeshore Protection Regulations.

3.2 APPLICATION **AND REVIEW** PROCEDURE

- A. An applicant shall file an application with the County Planning Office or other agent as designated by the Flathead County Commissioners.
- B. An application is deemed as accepted when the complete application and fee are presented.
  - 1. **The planning staff shall review all applications to ensure all information required to make a decision has been submitted.**
  - 2. **If the planning staff determines there is missing information from the the application, planning staff shall notify the applicant the nature of the information required in order to complete the application.**
  - 3. **If the required information is not submitted within a 60 days from the date the application was submitted, the application shall be terminated.**
- C. The planning staff shall review the application and other information for compliance with the requirements of these regulations and, based on this review, **the application shall be processed as follows:** ~~shall process the application as follows:~~
  - a. Projects will receive summary review **(76-7-207(3), M.C.A.)** ~~(Section 3.3)~~ if the project is in compliance with the construction requirements and design standards of these regulations or if proper design modifications and necessary conditions can be incorporated into the project to bring it into compliance.
  - b. **The governing body shall review the application, other information and the planning staff findings and recommendations in order to determine whether the proposed project will have a minimal or a significant impact on the lake, lakebed, or its lakeshore.** ~~If the planning staff or governing body determines that a project will create a significant impact to the lake or lakeshore protection zone, the application will be forwarded to the Planning Board for review and recommendation (Section 3.4) prior to forwarding the application to the governing body for final action (Section 3.3).~~
  - c. **If the governing body or planning staff determines that the proposed project may have a significant impact on the lake, lakebed, or lakeshore, or the project will require a major variance pursuant to Section 5.1, B.2 of these regulations, it shall first seek a recommendation from the planning board for review in accordance to Section 3.3 of these regulations.**
  - d. Projects requiring minor or major variances will be reviewed according to Section 5.1.B.

Lake and Lakeshore Protection Regulations  
Text Amendment FLLSTA-20-01  
Exhibit A

- e. **The governing body, based on its findings, shall approve, conditionally approve, or deny the application.**
- f. ~~Projects which have been predetermined to have an insignificant impact on the lake or lakeshore protection zone shall receive administrative review (Section 3.5).~~

### 3.3 ~~REVIEW PROCEDURE~~

- A. ~~The governing body shall review the application, other information and the planning staff findings and recommendations in order to determine whether the proposed project will have a minimal or a significant impact on the lake, lakebed or its lakeshore.~~
- B. ~~If the governing body determines that the proposed project may have a significant impact on the lake, lakebed or lakeshore, or, the project will require a major variance pursuant to Section 5.1, B.2 of these regulations, it shall first seek a recommendation from the planning board for review in accordance to Section 3.4 of these regulations.~~
- C. ~~The governing body, based on its findings, shall approve, conditionally approve or deny the application.~~

### 3.5 ~~ADMINISTRATIVE PERMIT PROCEDURE~~

- A. ~~Certain activities and projects, by their very nature, when constructed within the approved design guidelines as found in Section 4.2-4.3 of these regulations are found to have an insignificant impact on the lake and lakeshore, the planning director may issue an administrative lakeshore construction permit for the following activities when (a) the Director finds in each specific case that the proposed activity or activities will have an insignificant impact on the lake or lakeshore and (b) said activities comply with Section 4.2 and 4.3 of these regulations:~~

~~Single residential docks,  
Utility lines,  
Rip rap,  
Free-standing pilings adjacent to dock,  
Ground mounted decks,  
Walkways,  
Shore stations,  
Small scale tree and vegetation removal as determined on a case by case basis.~~

## **5.4 APPEALS**

**Any person, unit of government, or agency may file an appeal when aggrieved by a**

decision or interpretation by the Flathead County Planning and Zoning Director, or his or her designee, provided that the appeal is passed

- A. The planning director, or his or her designee, made an error in the interpretation of these regulations, and
- B. The erroneous interpretation specifically aggrieves the appellant.

## 5.5 APPEAL APPLICATION AND PROCEDURE

- A. An application of an appeal may be submitted in the form of a letter to the planning and zoning department, stating the nature of the error in interpretation and how the appellant was specifically aggrieved. The appeal request along with the payment of fees shall be submitted within 30 days from the time the official interpretation or determination was made.
- B. No part of any fee shall be refundable after an appeal is filed and such fee is paid.
- C. The planning director, or his or her designee, shall fix a reasonable time for a hearing before the Flathead County Planning Board and give public notice of the hearing to the parties of interest and the public by publishing notice in a newspaper of general circulation in the community at least 15 days prior to the hearing.
- D. Where an appeal concerns a particular piece of property, all property owners within 150 feet of the subject property shall be notified by mail at least 15 days prior to the hearing. When the subject property abuts a right-of-way, the 150-foot measurement shall be in addition to this right-of-way along the abutting line. The appellant shall submit an additional fee of \$75 for the certified list of all adjacent property owners.
- E. The planning board shall review the appellant's request, a staff report or analysis of the request, and planning staff recommendation. The planning board may also take comments from the appellant and planning staff as necessary. The Planning Board shall then make a recommendation to the governing body.
- F. The governing body will consider the recommendation of the Planning Board and may grant or deny the appeal.